



Lamoine Board of Appeals Minutes of July 25, 2006

Chairman Chris Tadema-Wielandt called the meeting to order at 6:33 PM.

Present were: Appeals Board members Chris Tadema-Wielandt, Reginald McDevitt, Jay Fowler, Warren Craft, Hancock "Griff" Fenton, John Wuorinen (arrived 6:43 pm); Secretary Stu Marckoon, Planning Board Secretary Michael Garrett, Planning Board Alternate Michael Jordan, Assistant Town Clerk Kathleen DeFusco, and Peter Roy, attorney for the appellants.

Selection of Officers – Mr. Fowler moved to keep the officers the same as the previous year (Mr. Tadema-Wielandt, Chair, Mr. Craft Vice-Chair, Mr. Marckoon secretary.). Mr. Fenton 2nd. **Vote in favor was 4-0, Mr. Tadema-Wielandt abstained.**

Gordon Williams, Trustee vs. Lamoine Planning Board

Quorum/Conflicts - Chairman Tadema-Wielandt said the case is a Shoreland zoning issue involving map 14 lot 45. He said the Planning Board declined to issue an after-the-fact permit for a building in the Shoreland Zone. He said the purpose of this meeting is to get the administrative business out of the way. He said it appears a quorum is present. Secretary Marckoon suggested that the members present be polled for any potential conflicts of interest. Each member said they did not have any conflicts or biases. Chairman Tadema-Wielandt again stated it appeared a quorum was present.

Standing - Chairman Tadema-Wielandt said the appeal was brought by the party who made application, so there is no question in regard to standing.

Type of Appeal - Chairman Tadema-Wielandt said in reading the Shoreland Zoning Ordinance, it appears the board is not limited to holding merely a review of the Planning Board record. He said he would recommend a modified de novo hearing, so the Board of Appeals is not limited to considering only what was before the Planning Board.

Attorney Roy said the appellants would not be submitting a vast array of new information, generally only what was before the Planning Board. He said there would not be a large amount of evidence or witnesses. Chairman Tadema-Wielandt said he's not really sure the Appeals Board has a choice in the type of hearing to be held. Mr. Craft said he would be OK with either an administrative hearing, but a modified de novo hearing would be OK too. Chairman Tadema-Wielandt said some court decisions have said the Appeals Board action must be open to taking additional evidence. Mr. Craft said he agreed, but would prefer not to get into a deep, full de-novo hearing. Mr. Fenton said he agreed a modified de-novo hearing is appropriate, as it's more flexible than an administrative hearing. Mr. Fowler said he would like to see the hearing as open as

possible to all evidence so the Appeals Board could make the best decision it can. Mr. McDevitt said he thought an administrative hearing would be OK at first, but would go along with a modified de novo hearing. Mr. Fowler said he'd like to look at everything so he could say with confidence a decision is right or wrong. Chairman Tadema-Wielandt said there is no sense in limiting the evidence. Mr. Fowler said he'd like the chance to accept evidence.

At this point in the meeting Mr. Wuorinen arrived. He was informed of the actions taken thus far and asked by Chairman Tadema-Wielandt if he had any biases or conflicts in the case. Mr. Wuorinen replied he did not. Chairman Tadema-Wielandt asked attorney Roy if there was any concern regarding Mr. Wuorinen's late arrival. Mr. Roy said he had no concern, noting that he and Mr. Wuorinen had been involved in Appeals Board matters in Castine several years ago.

Completeness of Application – Chairman Tadema-Wielandt said it appears the Appeals Board has everything the code requires, though that did not appear to be the case at the end of the 30-day appeal period. He said the appeal form itself was received in a timely manner, but the appeal fee and the Shoreland and Building permit fees were not received until last week. He asked if this was just an oversight. Mr. Roy said his client and he each thought the other had paid the fees. Secretary Marckoon said the clock may not have started running on the appeal period until the appellants were notified in writing by the Planning Board of the decision. Planning Board Secretary Michael Garrett said that mailing went out in late June and was received by the appellant on June 26th. Secretary Marckoon said the fees were received on July 17th, and in his opinion were timely. Chairman Tadema-Wielandt said that he would agree that the proper time lines were met.

Evidence Required from Appellant – Chairman Tadema-Wielandt said it would be helpful to let Mr. Roy know what is needed that is not in the Planning Board file. He said he would like to have the Code Enforcement Officer present at the meeting. He said Lawrence Young should be present, along with either Michael Garrett or some other member of the Planning Board. Mr. Roy said he would notify Mr. Young.

Chairman Tadema-Wielandt said he would like guidance on after the fact permits. Mr. Roy said his intention was to submit a brief written presentation. Chairman Tadema-Wielandt asked if that would be one of the issues. Mr. Roy said it would. Chairman Tadema-Wielandt said he would also like to see it addressed whether the conversion on the building involved a seasonal structure to a year-round structure. Mr. Roy said that depends on the constitution of the occupant. He said in the past some people have lived in the former building during the winter months, though it may not have been comfortable. Chairman Tadema-Wielandt said the comfort level might be a reason for a conversion.

Mr. Craft noted that Mr. Tweedie's daughter was living in the house when it was discovered there were cracks and varmints. Chairman Tadema-Wielandt asked Mr. Roy if Mr. Tweedie or his daughter would be present. Mr. Roy said Mr. Tweedie would be present and will have the ability to present some factual evidence. He said if someone

had applied for the proper permits in the beginning it's unlikely they would have to be here today.

Mr. Roy said at the Planning Board meeting, Melody Havey raised the issue of a possible conflict by Mr. Roy representing Mr. Tweedie because Mr. Roy's partner (Tony Beardsley) often acts as the town's attorney. Mr. Roy said he sat to the side during the Planning Board meeting, and Mr. Tweedie was not prepared to present his position as well. Chairman Tadema-Wielandt said he would like Mr. Roy to participate as fully before the Appeals Board as he would like. Mr. Wuorinen asked if the Appeals Board should be polled on that issue. Chairman Tadema-Wielandt said there is a letter in the file addressed to the Planning Board from Gordon Williams that alleged that Mr. Roy was not allowed to present evidence to the Planning Board. Mr. Roy said he didn't participate and Mr. Tweedie was not prepared. Chairman Tadema-Wielandt asked if that was fatal to Mr. Tweedie's position. He asked if any board members had any view contrary to his regarding Mr. Roy's participation. Mr. Fowler said that did not bother him.

Mr. Fenton said it was hard for him to believe that a property owner did not have a picture of a building on the property. He said that would help at the next hearing. Mr. Fowler asked if there were any dimensions on the assessor's cards. Chairman Tadema-Wielandt said there are, and it would be beneficial to review the file.

Mr. Fowler said he put an addition on a home next to Mr. Tweedie's property many years ago when Mr. Tweedie served on the Planning Board, and Mr. Tweedie made them jump through hoops by getting a surveyor, showing setbacks and the floodplain. He said that ought to be taken into consideration. He said he would like some answers from the people doing the work in the building. He said Mr. Tweedie was not ignorant about knowing what needed to be done. He said the board should know the exact dimensions, the setbacks, and the land available.

Mr. Roy said there is a survey that shows the setbacks, and they do have measurements of the building. Chairman Tadema-Wielandt asked if that was in addition to the May 12th survey. Mr. Roy said it adds to that survey.

Mr. Fowler said the plumbers and electricians should know they needed permits from the town. Mr. Roy said the contractor from day one should have known. Chairman Tadema-Wielandt said according to the Planning Board file, the contractor has worked for Mr. Tweedie for 35-years. Mr. Fowler said the contractor has worked on several places in town and knows what he should be doing.

Chairman Tadema-Wielandt said it appears Mr. Roy knows what is needed and has a surveyor working on it. Mr. Roy said if there is anything else the Board wants for evidence to let Secretary Marckoon know, and he could notify Mr. Roy's office.

Mr. McDevitt noted that the contractor, Lawrence Young, was likely related to Dr. Young who once owned the Tweedie property.

Chairman Tadema-Wielandt asked Mr. Garrett if the Appeals Board had the entire Planning Board file. Mr. Garrett said he would see to it that they do. Mr. Fenton said it would be beneficial if the file could be sent to the Board of Appeals members before the next meeting. Mr. Marckoon said he's unable to copy the large survey maps. Mr. Roy said he would supply extra copies of the maps.

Next Meeting Date – After a lengthy discussion of dates, the Appeals Board set the hearing date for Wednesday, August 16, 2006 at 7:00 PM at the Town Hall.

Site Visit – Mr. Wuorinen asked about conducting a site visit. Chairman Tadema-Wielandt said he was unsure what benefit there would be to that. He said the main issue is expansion, and a site visit won't show what was there before. Mr. Roy said there are some old concrete posts on the same footprint. He said most everything else could be quantified off premises, but he had no objection to a site visit. Mr. Fowler said he would like to see the cement posts. He said he heard some had been removed. Mr. Roy attempted to contact Mr. Tweedie by phone to see if a site visit could be done following adjournment, but there was no answer. Mr. Roy said he would check with Mr. Tweedie and get back to Mr. Marckoon.

Consideration of January 31, 2006 Minutes – Mr. McDevitt moved to accept the minutes as presented. Mr. Fowler 2nd. **Vote in favor was unanimous.**

There being no further business, Mr. Wuorinen moved to adjourn at 7:20 PM. Mr. Fowler 2nd. **Vote in favor was unanimous.**

Respectfully submitted,

Stu Marckoon, Secretary
Lamoine Board of Appeals

This meeting was also recorded on DVD (video & audio). These minutes are NOT a transcript, merely a summary of the conversations. The recording has NOT been transcribed, but is on file at the Lamoine Town Office.

Minutes edited and approved on August 16, 2006.